

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOEL RICH AND MARY RICH,

Plaintiffs,

v.

FOX NEWS NETWORK, LLC, MALIA
ZIMMERMAN, AND ED BUTOWSKY,

Defendants.

Civil Action No. 1:18-cv-02223 (GBD)

**FOX NEWS NETWORK’S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS’ COMPLAINT**

Defendant Fox News Network, LLC (“Fox News”) hereby answers and asserts its affirmative defenses to the Complaint filed by Joel Rich and Mary Rich (“Plaintiffs”). Fox News denies the allegations and characterizations in Plaintiffs’ Complaint unless expressly admitted in the following paragraphs. Fox News reserves all rights to amend its Answer and affirmative defenses, as necessary.

1. Fox News denies the allegations in paragraph 1, except to admit that Seth Rich was murdered in Washington, D.C., and Joel and Mary Rich are his parents.

2. Fox News denies the allegations in paragraph 2, except to admit that Seth Rich was murdered in Washington, D.C., in July 2016 and that he was a young DNC staffer.

3. Fox News denies the allegations in paragraph 3, except to admit that Plaintiffs hired Capitol Investigations LLC, Rod Wheeler’s private investigation firm, to investigate Seth Rich’s death.

4. Fox News denies the allegations in paragraph 4.

5. Fox News denies the allegations in paragraph 5.

6. Fox News denies the allegations in paragraph 6, except to admit that Plaintiffs

brought the instant suit for damages.

7. Fox News denies the factual allegations in paragraph 7, except to admit that Plaintiffs are citizens of Nebraska; Malia Zimmerman is a citizen of California; Fox News is a Delaware corporation with its principal place of business in New York; and Fox News is an indirectly owned subsidiary of Fox Corporation, a publicly traded Delaware corporation.

8. The allegations in paragraph 8 of the Complaint state legal conclusions and do not require a response. To the extent a response is required, Fox News denies the allegations in paragraph 8, except to admit that the articles at issue were published in New York.

9. Fox News admits the allegations in paragraph 9.

10. Fox News admits the allegations in paragraph 10.

11. Fox News admits the allegations in paragraph 11.

12. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and on that basis denies them, except to admit that Ed Butowsky has appeared on Fox News and Fox Business News.

13. Fox News admits the allegations in paragraph 13.

14. Fox News admits the allegations in paragraph 14.

15. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and on that basis denies them, except to admit that Seth Rich was murdered on July 10, 2016, at the age of 27.

16. Fox News admits the allegations in paragraph 16.

17. Fox News lacks knowledge or information sufficient to form a belief as to

the truth of the allegations in paragraph 17 and on that basis denies them, except to admit that, as of May 16, 2017, the Metropolitan Police Department had no suspects and no substantial leads.

18. Fox News denies the allegations in paragraph 18, except to admit that an article was published in the *Washington Post* on June 14, 2016, which speaks for itself.

19. Fox News admits the allegations in paragraph 19.

20. Fox News admits the allegations in paragraph 20.

21. Fox News denies the allegations in paragraph 21, except to admit that a statement was released by the Department of Homeland Security on October 7, 2016, which speaks for itself.

22. Fox News denies the allegations in paragraph 22, except to admit that there were numerous persons stating that Seth Rich had leaked DNC emails prior to the publication of the article at issue.

23. Fox News denies the allegations in paragraph 23, except to admit that on August 10, 2016, an article was published in *Business Insider*, which speaks for itself.

24. Fox News denies the allegations in paragraph 24.

25. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and on that basis denies them.

26. Fox News admits the allegations in the first two sentences of paragraph 26. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence and on that basis denies them.

27. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and on that basis denies them.

28. Fox News denies the allegations in paragraph 28, except to admit that on January

3, 2017, Zimmerman sent Brad Bauman an email, which speaks for itself.

29. Fox News denies the allegations in paragraph 29.

30. Fox News denies the allegations in paragraph 30, except to admit that Zimmerman sent Joel Rich an email on January 5, 2017, which email speaks for itself.

31. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and on that basis denies them.

32. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and on that basis denies them.

33. Fox News admits the allegations in the first sentence of paragraph 33. Fox News further admits that Wheeler's contributor agreement with Fox News provided for payment for on-air appearances and off-air assistance, as requested by Fox.

34. Fox News denies the allegations in paragraph 34, except to admit that on February 23, 2017, Butowsky sent Wheeler a text message, which speaks for itself.

35. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 and on that basis denies them.

36. Fox News denies the allegations in paragraph 36.

37. Fox News admits that Wheeler met with Butowsky and Zimmerman at a restaurant in Capitol Hill in Washington, D.C. on or around February 28, 2017.

38. Fox News admits the allegations in paragraph 38.

39. Fox News denies the allegations in paragraph 39.

40. Fox News denies the allegations in paragraph 40.

41. Fox News denies the allegations in paragraph 41, except to admit that, on February 28, 2017, Butowsky emailed Joel Rich and offered to hire a former DC

homicide investigator as a private investigator on Plaintiffs' behalf.

42. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and on that basis denies them.

43. Fox News denies the allegations in paragraph 43.

44. Fox News denies the allegations in paragraph 44.

45. Fox News denies the allegations in paragraph 45, except to admit that on or around March 3, 2017, Butowsky sent Joel Rich a draft engagement agreement, which speaks for itself.

46. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and on that basis denies them.

47. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 and on that basis denies them.

48. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and on that basis denies them.

49. Fox News denies the allegations in paragraph 49, except to admit that Butowsky emailed Joel Rich on March 5, 2017, which email speaks for itself.

50. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and on that basis denies them, except to admit that Plaintiffs invited Butowsky to a fundraising concert.

51. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and on that basis denies them.

52. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and on that basis denies them.

53. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and on that basis denies them.

54. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 and on that basis denies them.

55. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 and on that basis denies them.

56. Fox News denies the allegations in paragraph 56, except to admit that Joel and Mary Rich executed a contract with Rod Wheeler to investigate Seth Rich's murder, which contract speaks for itself.

57. Fox News denies the allegations in paragraph 57, except to admit that Joel and Mary Rich executed a contract with Capitol Investigations LLC to investigate Seth Rich's murder, which contract speaks for itself.

58. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 and on that basis denies them.

59. Fox News denies the allegations in paragraph 59.

60. Fox News admits the allegations in paragraph 60.

61. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 and on that basis denies them.

62. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 and on that basis denies them.

63. Fox News lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 63 and on that basis denies them.

64. Fox News denies the allegations in paragraph 64, except to admit that

Sean Spicer was quoted in a news report stating that he met in his office with Butowsky and Wheeler and that they discussed a news story about Seth Rich.

65. Fox News lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65 and on that basis denies them.

66. Fox News admits the allegations in paragraph 66.

67. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 and on that basis denies them.

68. Fox News denies the allegations in paragraph 68, except to admit that Butowsky was copied on some emails Zimmerman sent to Wheeler, which emails speak for themselves.

69. Fox News denies the allegations in paragraph 69.

70. Fox News denies the allegations in paragraph 70, except to admit that Fox News published on May 16, 2017, an article written by Zimmerman titled “Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources” that was later updated both with additional content and the title “Family of slain DNC staffer Seth Rich blasts detective over report of WikiLeaks link.” The content of the article speaks for itself.

71. Fox News denies the allegations in paragraph 71, except to admit that Zimmerman sent certain drafts of her article to Wheeler and Butowsky.

72. Fox News admits that Zimmerman sent Wheeler a draft of her article on May 11, 2017.

73. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 and on that basis denies them.

74. Fox News admits that Zimmerman called Wheeler on May 15, 2017, but otherwise denies the allegations in paragraph 74.

75. Fox News denies the allegations in paragraph 75, except to admit that Wheeler wrote to Marraco by text on May 15, 2017, the contents of which speak for themselves.

76. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 and on that basis denies them.

77. Fox News denies the allegations in paragraph 77.

78. Fox News admits the allegations in paragraph 78.

79. Fox News denies the allegations in paragraph 79.

80. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 and on that basis denies them, except to admit that Wheeler called Joel Rich on May 15, 2017.

81. Fox News denies the allegations in paragraph 81, except to admit that on May 15, 2017, Zimmerman wrote to Wheeler by text message, which speaks for itself.

82. Fox News denies the allegations in paragraph 82, except to admit that Butowsky emailed the identified individuals on May 15, 2017, which email speaks for itself.

83. Fox News denies the allegations in paragraph 83, except to admit that on May 15, 2017, an article was published on Fox 5 DC, which speaks for itself.

84. Fox News denies the allegations in paragraph 84, except to admit that Zimmerman sent a text message to Wheeler, which message speaks for itself.

85. Fox News denies the allegations in paragraph 85, except to admit that Zimmerman wrote to Wheeler by text message, which speaks for itself.

86. Fox News lacks knowledge or information sufficient to form a belief

about the truth of the allegations in paragraph 86 and on that basis denies them.

87. Fox News denies the allegations in paragraph 87, except to admit that on May 16, 2017, Fox News published an article entitled “Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources,” which speaks for itself.

88. Fox News admits that its May 16 article stated, among other things, that “[t]he revelation is consistent with the findings of Rod Wheeler, a former DC homicide detective and Fox News contributor and whose private investigation firm was hired by Rich’s family to probe the case.”

89. Fox News denies the allegations in paragraph 89, except to admit that its May 16 article, among other things, quoted Wheeler as stating that “[m]y investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks.”

90. Fox News denies the allegations in paragraph 90, except to admit that the revised version of its May 16 article contained the quoted statements, among others.

91. Fox News denies the allegations in paragraph 91.

92. Fox News denies the allegations in paragraph 92.

93. Fox News denies the allegations in paragraph 93.

94. Fox News denies the allegations in paragraph 94, except to admit that on May 17, 2017, the local D.C. Fox affiliate issued a clarification that speaks for itself.

95. Fox News denies the allegations in paragraph 95.

96. Fox News denies the allegations in paragraph 96, except to admit that on May 17, 2017, an article was published on NBC News, which speaks for itself.

97. Fox News denies the allegations in paragraph 97, except to admit that on May 17, 2017, an article was published on NBC News, which speaks for itself.

98. Fox News denies the allegations in paragraph 98, except to admit that on May 18, 2017, Joel Rich wrote to Zimmerman by email, which speaks for itself.

99. Fox News denies the allegations in paragraph 99, except to admit that on May 19, 2017, Zimmerman sent Joel Rich an email, which speaks for itself.

100. Fox News denies the allegations in paragraph 100, except to admit that on May 18, 2017, Zimmerman sent Joel Rich an email, which speaks for itself.

101. Fox News admits that Wheeler so alleged in paragraph 146 of his Amended Complaint against Fox News Network, LLC, Case No. 17-cv-5807 (S.D.N.Y.), which document speaks for itself.

102. Fox News lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 102 and on that basis denies them.

103. Fox News denies the allegations in paragraph 103.

104. Fox News denies the allegations in paragraph 104, except to admit that Seth Rich's possible involvement in the leak of DNC emails was referred to in several television segments, which speak for themselves.

105. Fox News admits the allegations in paragraph 105.

106. Fox News denies the allegations in paragraph 106, except to admit that the article at issue was retracted on May 23, 2017.

107. Fox News admits the allegations in paragraph 107.

108. Fox News denies the allegations in paragraph 108—in particular, that any of the alleged statements identified in this paragraph constituted continued coverage by Fox News of the Seth Rich story.

109. Fox News denies the allegations in paragraph 109, except to admit that

Variety published an article on May 24, 2017, which speaks for itself.

110. Fox News denies the allegations in paragraph 110.

111. Fox News lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 111 and on that basis denies them.

112. Fox News denies the allegations in paragraph 112, except to admit that on June 26, 2017, Butowsky published a tweet, which speaks for itself.

113. Fox News lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 113 and on that basis denies them.

114. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 114 and on that basis denies them.

115. Fox News lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 115 and on that basis denies them.

116. Fox News denies the allegations in paragraph 116, except to admit the Twitter handle @CassandraRules published a tweet in March 2018, which speaks for itself.

117. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 117 and on that basis denies them.

118. Fox News denies the allegations in paragraph 118.

119. Fox News denies the allegations in paragraph 119.

120. Fox News denies the allegations in paragraph 120, except to admit that Joel and Mary Rich authored an op-ed piece in the *Washington Post* on May 23, 2017, which speaks for itself.

121. Fox News denies the allegations in paragraph 121, except to admit that Joel and Mary Rich authored an op-ed piece in the *Washington Post* on May 23, 2017, which speaks for

itself.

122. Fox News denies the allegations in paragraph 122, except to admit that Joel and Mary Rich authored an op-ed piece in the *Washington Post* on May 23, 2017, which speaks for itself.

123. Fox News denies the allegations in paragraph 123, except to admit that Joel and Mary Rich authored an op-ed piece in the *Washington Post* on May 23, 2017, which speaks for itself.

124. Fox News denies the allegations in paragraph 124.

125. Fox News denies the allegations in paragraph 125.

126. Fox News denies the allegations in paragraph 126, except to admit that the death of a child under violent circumstances constitutes an enormous blow to surviving parents.

127. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 127 and on that basis denies them.

128. Fox News denies the allegations in paragraph 128.

129. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 129 and on that basis denies them.

130. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 130 and on that basis denies them.

131. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 131 and on that basis denies them.

132. Fox News denies the allegations set forth in the opening clause of paragraph 132 and lacks knowledge or information sufficient to form a belief as to the

truth of the remaining allegations and on that basis denies them.

133. Fox News lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 133 and on that basis denies them.

134. Fox News denies the allegations in paragraph 134.

135. In response to paragraph 135, Fox News repeats and reasserts its foregoing answers as though they were fully set forth herein.

136. Fox News denies the allegations in paragraph 136.

137. Fox News denies the allegations in paragraph 137.

138. Fox News denies the allegations in paragraph 138.

139. Fox News denies the allegations in paragraph 139.

140. Fox News denies the allegations in paragraph 140.

141. Fox News denies the allegations in paragraph 141.

142. Fox News denies the allegations in paragraph 142.

143. The allegations in paragraph 143 state legal conclusions and do not require a response. To the extent that a response is required, Fox News denies the allegations in paragraph 143.

144. Fox News denies the allegations in paragraph 144.

145. In response to paragraph 145, Fox News repeats and reasserts its foregoing answers as though they were fully set forth herein.

146. Fox News denies the allegations in paragraph 146.

147. Fox News denies the allegations in paragraph 147.

148. Fox News denies the allegations in paragraph 148.

149. Fox News denies the allegations in paragraph 149.

150. Fox News denies the allegations in paragraph 150.

151. Fox News denies the allegations in paragraph 151.

152. Fox News denies the allegations in paragraph 152.

153. Fox News denies the allegations in paragraph 153.

154. Fox News denies the allegations in paragraph 154.

155. Fox News denies the allegations in paragraph 155.

156. Fox News denies the allegations in paragraph 156.

157. In response to paragraph 157, Fox News repeats and reasserts its foregoing answers as though they were fully set forth herein.

158. Fox News denies the allegations in paragraph 158.

159. Fox News denies the allegations in paragraph 159.

160. Fox News denies the allegations in paragraph 160.

161. Fox News denies the allegations in paragraph 161.

162. Fox News denies the allegations in paragraph 162.

163. Fox News denies the allegations in paragraph 163.

164. Fox News denies the allegations in paragraph 164.

165. Fox News denies the allegations in paragraph 165.

166. Fox News denies the allegations in paragraph 166.

167. Fox News denies the allegations in paragraph 167.

168. Fox News denies the allegations in paragraph 168.

169. Fox News denies the allegations in paragraph 169, except to admit that Wheeler confirmed that the Zimmerman/Fox article was true and stated publicly “I am of the personal opinion that the information/article reported by Fox News Channel was

essentially correct.”

170. Fox News denies the allegations in paragraph 170.

171. Fox News denies the allegations in paragraph 171.

172. In response to paragraph 172, Fox News repeats and reasserts its foregoing answers as though they were fully set forth herein.

173. Fox News denies the allegations in paragraph 173, except to admit that at some point after the formation of the contract Fox News was aware of the existence of a contract between Capitol Investigations LLC and the Riches.

174. Fox News denies the allegations in paragraph 174.

175. Fox News denies the allegations in paragraph 175.

176. Fox News denies the allegations in paragraph 176.

177. Fox News denies the allegations in paragraph 177.

178. In response to paragraph 178, Fox News repeats and reasserts its foregoing answers as though they were fully set forth herein.

179. Fox News admits the allegations in paragraph 179.

180. Fox News denies the allegations in paragraph 180, except to admit that Wheeler was a paid contractor of Fox News.

181. Fox News denies the allegations in paragraph 181.

182. Fox News denies the allegations in paragraph 182.

183. Fox News denies the allegations in paragraph 183.

184. Fox News denies the allegations in paragraph 184.

ANSWER TO PRAYER FOR RELIEF

To the extent that any response is required to Plaintiffs’ request for relief, Fox News

denies that Plaintiffs are entitled to any relief under the Complaint.

ANSWER TO JURY DEMAND

Plaintiffs' request for a trial by jury does not require a response from Fox News.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof that it would not otherwise bear, Fox News asserts the following defenses, all of which are pleaded in the alternative, and none of which constitutes an admission that plaintiffs Joel Rich and Mary Rich are entitled to any relief whatsoever.

1. The Complaint fails to state a claim against Fox News upon which relief can be granted.
2. The challenged publication and conduct by Fox News are protected by the First Amendment.
3. The challenged statements of Fox News were not of and concerning the Plaintiffs and did not defame them or otherwise cause them harm.
4. The challenged statements of Fox News are substantially true.
5. The challenged statements of Fox News are matters of opinion that are not capable of being proved true or false.
6. The challenged statements of Fox News were not published with actual malice—that is, with knowledge of falsity or reckless disregard for the truth.
7. Fox News was not negligent.
8. Fox News did not intend to inflict emotional distress, nor was it reckless as to whether its conduct would inflict emotional distress.
9. Fox News's actions were justified or privileged.
10. Plaintiffs did not suffer damages as a result of the alleged publications and

newsgathering activities.

11. Plaintiffs cannot prove facts sufficient to warrant an award of punitive damages.

12. The imposition of punitive damages would violate the Constitution of the United States.

13. Any damages Plaintiffs suffered were the result of an intervening or superseding cause.

14. Plaintiffs cannot demonstrate irreparable injury to justify their requests for injunctive relief.

15. Plaintiffs have an adequate remedy at law and are therefore not entitled to injunctive relief.

16. To the extent that Plaintiffs have suffered any damages, Plaintiffs have failed to mitigate those damages and equity precludes the recovery of any such damages.

17. Any liability or responsibility for payment of Fox News is limited to its equitable share pursuant to NY CPLR §§ 1601 *et seq.* and any other applicable statute, law, or rule.

ADDITIONAL DEFENSES

Fox News did not knowingly or intelligently waive any applicable affirmative or other defense not stated above, and reserves the right to supplement or amend this Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this action.

PRAYER FOR RELIEF

Fox News respectfully requests that the Court enter judgment in its favor and against Plaintiffs, that Plaintiffs take nothing against Fox News by their suit, and that the Court grant Fox News such other and further relief as the Court deems just and proper.

Dated: November 20, 2019

Respectfully submitted,

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*Attorneys for Defendant Fox News Network,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2019, I electronically filed the foregoing Answer of Fox News Network, LLC with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to registered CM/ECF participants.

S/Joseph M. Terry
Counsel for Fox News Network, LLC